

## § 2417.204

for testimony, in travel, and for attendance in the legal proceeding.

(c) The Office of the Solicitor reserves the right to require additional information to complete the request where appropriate.

(d) The request should be submitted at least 30 days before the date that records or testimony is required. Requests submitted in less than 30 days before records or testimony is required must be accompanied by a written explanation stating the reasons for the late request and the reasons for expedited processing.

(e) Failure to cooperate in good faith to enable the FLRA to make an informed decision may serve as the basis for a determination not to comply with the request.

(f) The request should state that the requester will provide a copy of the employee's statement free of charge and that the requester will permit the FLRA to have a representative present during the employee's testimony.

### § 2417.204 Where to submit a request.

(a) Requests or demands for official records or information or testimony under this part must be served on the Office of the Solicitor at the following address: Office of the Solicitor, Federal Labor Relations Authority, 1400 K Street, NW., Suite 201, Washington, DC 20424-0001; telephone: (202) 218-7999; fax: (202) 343-1007. The request must be sent by mail, fax, or e-mail and clearly marked "Part 2417 Request for Testimony or Official Records in Legal Proceedings."

(b) A person requesting public FLRA information and non-public FLRA information under this part may submit a combined request for both to the Office of the Solicitor. If a requester decides to submit a combined request under this section, the FLRA will process the combined request under this part and not under part 2411 (FOIA).

### § 2417.205 Consideration of requests or demands.

(a) After receiving service of a request or demand for testimony, the FLRA will review the request and, in accordance with the provisions of this part, determine whether, or under what conditions, to authorize the employee

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to testify on matters relating to official information and/or produce official records and information.

(b) Absent exigent circumstances, the FLRA will issue a determination within 30 days from the date the request is received.

(c) The FLRA may grant a waiver of any procedure described by this part where a waiver is considered necessary to promote a significant interest of the FLRA or the United States or for other good cause.

(d) *Certification (authentication) of copies of records.* The FLRA may certify that records are true copies in order to facilitate their use as evidence. If a requester seeks certification, the requester must request certified copies from the Solicitor at least 30 days before the date they will be needed.

### § 2417.206 Final determination.

The Chairman of the FLRA, or the Chairman's designee, makes the final determination on demands or requests to employees thereof for production of official records and information or testimony in litigation in which the FLRA is not a party. All final determinations are within the sole discretion of the Chairman or the Chairman's designee. The Chairman or designee will notify the requester and, when appropriate, the court or other competent authority of the final determination, the reasons for the grant or denial of the request, and any conditions that may be imposed on the release of records or information, or on the testimony of an employee. This final determination exhausts administrative remedies for discovery of the information.

### § 2417.207 Restrictions that apply to testimony.

(a) Conditions or restrictions may be imposed on the testimony of employees including, for example:

- (1) Limiting the areas of testimony;
- (2) Requiring the requester and other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal;
- (3) Requiring that the transcript will be used or made available only in the particular legal proceeding for which

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testimony was requested. The requester may also be required to provide a copy of the transcript of testimony at the requester's expense.

(b) The employee's written declaration may be provided in lieu of testimony.

(c) If authorized to testify pursuant to this part, an employee may testify as to facts within his or her personal knowledge, but, unless specifically authorized to do so by the Chairman or the Chairman's designee, the employee shall not:

(1) Disclose confidential or privileged information; or

(2) For a current employee, testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of the FLRA unless testimony is being given on behalf of the United States (see also 5 CFR 2635.805).

(d) The scheduling of an employee's testimony, including the amount of time that the employee will be made available for testimony, will be subject to the approval of the Chairman or the Chairman's designee.

### § 2417.208 Restrictions that apply to released records.

(a) The Chairman or the Chairman's designee may impose conditions or restrictions on the release of official records and information, including the requirement that parties to the proceeding obtain a protective order or execute a confidentiality agreement to limit access and any further disclosure. The terms of the protective order or of a confidentiality agreement must be acceptable to the Chairman or the Chairman's designee. In cases where protective orders or confidentiality agreements have already been executed, the Chairman or the Chairman's designee may condition the release of official records and information on an amendment to the existing protective order or confidentiality agreement.

(b) If the Chairman or the Chairman's designee so determines, original records may be presented for examination in response to a request, but they may not be presented as evidence or otherwise used in a manner by which they could lose their identity as official records, nor may they be marked

or altered. In lieu of the original records, certified copies may be presented for evidentiary purposes.

### § 2417.209 Procedure when a decision is not made prior to the time a response is required.

If a response to a demand or request is required before the Chairman or the Chairman's designee can make the determination referred to in § 2417.206, the Chairman or the Chairman's designee, when necessary, will provide the court or other competent authority with a copy of this part, inform the court or other competent authority that the request is being reviewed, provide an estimate as to when a decision will be made, and seek a stay of the demand or request pending a final determination.

### § 2417.210 Procedure in the event of an adverse ruling.

If the court or other competent authority fails to stay a demand or request, the employee upon whom the demand or request is made, unless otherwise advised by the Chairman or the Chairman's designee, will appear, if necessary, at the stated time and place, produce a copy of this part, state that the employee has been advised by counsel not to provide the requested testimony or produce documents, and respectfully decline to comply with the demand or request, citing *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

## Subpart C—Schedule of Fees

### § 2417.301 Fees.

(a) *Generally.* The Chairman or the Chairman's designee may condition the production of records or appearance for testimony upon advance payment of a reasonable estimate of the costs there-to.

(b) *Fees for records.* Fees for producing records will include fees for searching, reviewing, and duplicating records, costs of employee time spent in reviewing the request, and expenses generated by materials and equipment used to search for, produce, and copy the responsive information. These fees and costs will be calculated and charged as are like fees and costs arising from requests made pursuant to the Freedom